

**ASSEMBLY BILL**

**No. 1733**

**Introduced by Assembly Member Harman**

February 22, 2005

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An act to amend Section 1624 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, as introduced, Harman. Contracts: statute of frauds.

Existing law provides that specified types of contracts are invalid unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or the party's agent.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1624 of the Civil Code is amended to  
2     read:  
3     1624. (a) The following contracts are invalid, unless they, or  
4     some note or memorandum thereof, are in writing and subscribed  
5     by the party to be charged or by the party's agent:  
6     (1) An agreement that by its terms is not to be performed  
7     within a year from the making thereof.  
8     (2) A special promise to answer for the debt, default, or  
9     miscarriage of another, except in the cases provided for in  
10    Section 2794.

1 (3) An agreement for the leasing for a longer period than one  
2 year, or for the sale of real property; or of an interest therein;  
3 such an agreement, if made by an agent of the party sought to be  
4 charged, is invalid, unless the authority of the agent is in writing,  
5 subscribed by the party sought to be charged.

6 (4) An agreement authorizing or employing an agent, broker,  
7 or any other person to purchase or sell real estate, or to lease real  
8 estate for a longer period than one year, or to procure, introduce,  
9 or find a purchaser or seller of real estate or a lessee or lessor of  
10 real estate where the lease is for a longer period than one year,  
11 for compensation or a commission.

12 (5) An agreement that by its terms is not to be performed  
13 during the lifetime of the promisor.

14 (6) An agreement by a purchaser of real property to pay an  
15 indebtedness secured by a mortgage or deed of trust upon the  
16 property purchased, unless assumption of the indebtedness by the  
17 purchaser is specifically provided for in the conveyance of the  
18 property.

19 (7) A contract, promise, undertaking, or commitment to loan  
20 money or to grant or extend credit, in an amount greater than one  
21 hundred thousand dollars (\$100,000), not primarily for personal,  
22 family, or household purposes, made by a person engaged in the  
23 business of lending or arranging for the lending of money or  
24 extending credit. For purposes of this section, a contract,  
25 promise, undertaking, or commitment to loan money secured  
26 solely by residential property consisting of one to four dwelling  
27 units shall be deemed to be for personal, family, or household  
28 purposes.

29 (b) Notwithstanding paragraph (1) of subdivision (a):

30 (1) An agreement or contract that is valid in other respects and  
31 is otherwise enforceable is not invalid for lack of a note,  
32 memorandum, or other writing and is enforceable by way of  
33 action or defense, provided that the agreement or contract is a  
34 qualified financial contract as defined in paragraph (2) and (A)  
35 there is, as provided in paragraph (3), sufficient evidence to  
36 indicate that a contract has been made or (B) the parties thereto  
37 by means of a prior or subsequent written contract, have agreed  
38 to be bound by the terms of the qualified financial contract from  
39 the time they reached agreement (by telephone, by exchange of  
40 electronic messages, or otherwise) on those terms.

(2) For purposes of this subdivision, a “qualified financial contract” means an agreement as to which each party thereto is other than a natural person and that is any of the following:

(A) For the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis.

(B) A contract (other than a contract for the purchase of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale, or transfer of any commodity or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of a dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into.

(C) For the purchase and sale of currency; or interbank deposits denominated in United States dollars.

(D) For a currency option, currency swap, or cross-currency rate swap.

(E) For a commodity swap or a commodity option ~~(other, other than an option contract traded on, or subject to the rules of a contract market or board of trade) trade~~.

(F) For a rate swap, basis swap, forward rate transaction, or an interest rate option.

(G) For a security-index swap or option, or a security or securities price swap or option.

(H) An agreement that involves any other similar transaction relating to a price or index ~~(including, including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar, or similar transaction with respect to a rate, commodity price, commodity index, security or securities price, security index, other price index, or loan price) price~~.

(I) An option with respect to any of the foregoing.

(3) There is sufficient evidence that a contract has been made in any of the following circumstances:

(A) There is evidence of an electronic communication ~~(including, including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval) retrieval~~, admissible in evidence under the laws of this

1 state, sufficient to indicate that in the communication a contract  
2 was made between the parties.

3 (B) A confirmation in writing sufficient to indicate that a  
4 contract has been made between the parties and sufficient against  
5 the sender is received by the party against whom enforcement is  
6 sought no later than the fifth business day after the contract is  
7 made ~~(or, or any other period of time that to which the parties~~  
8 ~~may agree in writing)~~ writing, and the sender does not receive, on  
9 or before the third business day after receipt ~~(or, or the other~~  
10 ~~period of time that to which the parties may agree in writing)~~  
11 writing, written objection to a material term of the confirmation.  
12 For purposes of this subparagraph, a confirmation or an objection  
13 thereto is received at the time there has been an actual receipt by  
14 an individual responsible for the transaction or, if earlier, at the  
15 time there has been constructive receipt, which is the time actual  
16 receipt by that individual would have occurred if the receiving  
17 party, as an organization, had exercised reasonable diligence. For  
18 the purposes of this subparagraph, a “business day” is a day on  
19 which both parties are open and transacting business of the kind  
20 involved in that qualified financial contract that is the subject of  
21 confirmation.

22 (C) The party against whom enforcement is sought admits in  
23 its pleading, testimony, or otherwise in court that a contract was  
24 made.

25 (D) There is a note, memorandum, or other writing sufficient  
26 to indicate that a contract has been made, signed by the party  
27 against whom enforcement is sought or by its authorized agent or  
28 broker.

29 For purposes of this paragraph, evidence of an electronic  
30 communication indicating the making in that communication of a  
31 contract, or a confirmation, admission, note, memorandum, or  
32 writing is not insufficient because it omits or incorrectly states  
33 one or more material terms agreed upon, as long as the evidence  
34 provides a reasonable basis for concluding that a contract was  
35 made.

36 (4) For purposes of this subdivision, the tangible written text  
37 produced by telex, telefacsimile, computer retrieval, or other  
38 process by which electronic signals are transmitted by telephone  
39 or otherwise shall constitute a writing, and any symbol executed  
40 or adopted by a party with the present intention to authenticate a

1 writing shall constitute a signing. The confirmation and notice of  
2 objection referred to in subparagraph (B) of paragraph (3) may  
3 be communicated by means of telex, telefacsimile, computer, or  
4 other similar process by which electronic signals are transmitted  
5 by telephone or otherwise, provided that a party claiming to have  
6 communicated in that manner shall, unless the parties have  
7 otherwise agreed in writing, have the burden of establishing  
8 actual or constructive receipt by the other party as set forth in  
9 subparagraph (B) of paragraph (3).  
10 (c) This section does not apply to leases subject to Division 10  
11 (commencing with Section 10101) of the Commercial Code.

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